

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

SEASON'S PIZZA RESTAURANT	)	
	)	
Plaintiff,	)	
	)	
v.	)	CA NO. 05-10710-NMG
	)	
MICHAEL CHERTOFF, et al.,	)	
	)	
Defendants.	)	
	)	

**DEFENDANTS' MOTION TO DISMISS**

Pursuant to Federal Rule of Civil Procedure 12(b)(1), Defendants in the above-captioned action respectfully move the Court to dismiss this action for lack of subject matter jurisdiction. The reasons for this motion are set forth more fully in the accompanying Memorandum of Law.

Respectfully submitted,

MICHAEL J. SULLIVAN  
United States Attorney

By: /s/ Damian W. Wilmot  
Damian W. Wilmot  
Assistant U.S. Attorney  
Moakley U.S. Courthouse  
1 Courthouse Way, Suite 9200  
Boston, MA 02210  
617-748-3398

Dated: November 30, 2005

**CERTIFICATION UNDER L.R. 7.1**

I certify that in accordance with Local Rule 7.1, I attempted to confer with Plaintiff's counsel to resolve the issues addressed in this Motion in good faith, but was unsuccessful in reaching him prior to filing this Motion.

/s/ Damian W. Wilmot  
DAMIAN W. WILMOT  
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon counsel for the plaintiff, Desmond P. Fitzgerald, Fitzgerald & Company, LLC, 18 Tremont Street, Suite 210, Boston, MA 02108, by first class, postage prepaid mail, on this date.

/s/ Damian W. Wilmot

Damian W. Wilmot

Assistant U.S. Attorney